

MERRIMACK, SS. THE STATE OF NEW HAMPSHIRE SUPERIOR COURT

Immaculee Muhizi
15 Hillcrest Road
Goffstown, NH 03045

v.

B-X Concord, LLC d/b/a The Birches at Concord
300 Pleasant Street
Concord, NH 03301

**NOTICE OF REMOVAL FROM THE
NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS
AND REQUEST FOR JURY TRIAL PURSUANT TO NH RSA 354-A:21-A**

Defendant, B-X CONCORD, LLC d/b/a THE BIRCHES AT CONCORD, by and through its attorneys, JACKSON LEWIS P.C., hereby gives notice of its intent to remove Plaintiff's Charge of Discrimination to the Merrimack County Superior Court pursuant to the provisions of NH RSA 354-A:21-a, for the following reasons:

1. On or about, March 28, 2018, Immaculee Muhizi dual-filed a Charge of Discrimination with the New Hampshire Commission for Human Rights ("NHCHR") (Charge No. EDCRNO(R) 0158-18) and the Equal Employment Opportunity Commission ("EEOC") (Charge No. 16D-2018-00185) against B-X Concord, LLC d/b/a The Birches at Concord. A copy of Plaintiff's Charge of Discrimination is appended hereto as Exhibit 1.

2. By letter sent by email to Defendant on October 7, 2021, the NHCHR issued a finding of probable cause and scheduled a public hearing to be held on January 19, 2022, under the authority of NH RSA 354-A:21, on the following issues:

- a) Whether Complainant was subjected to race discrimination in violation of NH RSA 354-A, et seq.?
 - b) Whether Complainant was subjected to color discrimination in violation of NH RSA 354-A?
 - c) Whether Complainant was subjected to national origin discrimination in violation of NH RSA 354-A, et seq.?
 - d) Whether Complainant was subjected to retaliation by Respondent in violation of NH RSA 354-A, et seq.?
3. Defendant denies Plaintiff's claims in their entirety.
 4. Defendant wishes to exercise its right to a jury trial in this Court pursuant to the provisions of NH RSA 354-A:21.
 5. A copy of this Notice has been provided to Plaintiff and to the New Hampshire Commission for Human Rights.

Respectfully Submitted,
B-X CONCORD, LLC d/b/a
THE BIRCHES AT CONCORD,
By its attorneys,
JACKSON LEWIS P.C.,

Date: November 5, 2021

By: /s/ Martha Van Oot
Martha Van Oot, NHBA #963
100 International Drive, Suite 363
Portsmouth, NH 03801
603.559.2700
Martha.vanoot@jacksonlewis.com

Certificate of Service

I hereby certify that copies of the foregoing were this day served via email and first-class mail on:

Immaculee Muhizi, *pro se*
15 Hillcrest Road
Goffstown, NH 03045
Immaculeemu2004@yahoo.com

Sarah E. Burke Cohen, Esq.
Assistant Director
N.H. Commission for Human Rights
2 Industrial Park Drive
Concord, NH 03301
Sarah.E.Burkecohen@hrc.nh.gov

Date: November 5, 2021

/s/ Martha Van Oot

Martha Van Oot

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION		Charge Presented To:		Agency(ies) Charge No(s):	
This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		<input checked="" type="checkbox"/> FEPA	EDCRNO(R) 0158-18		
		<input checked="" type="checkbox"/> EEOC	16D-2018-00185		
New Hampshire Commission for Human Rights and EEOC					
State or local Agency, if any					
Name (indicate Mr., Ms., Mrs.)		Home Phone (Incl. Area Code)		Date of Birth	
Immaculee Muhizi		(603) 384-1858			
Street Address		City, State and ZIP Code			
15 Hillcrest Road, Goffstown, NH 03045					
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)					
Name		No. Employees, Members		Phone No. (Include Area Code)	
B-X CONCORD, LLC D/B/A THE BIRCHES AT CONCORD		15 - 100		(603) 224-9111	
Street Address		City, State and ZIP Code			
300 Pleasant Street, Concord, NH 03301					
Name		No. Employees, Members		Phone No. (Include Area Code)	
B-X Concord, LLC		500 or More			
Street Address		City, State and ZIP Code			
4500 Dorr Street, Toledo, OH 43615					
DISCRIMINATION BASED ON (Check appropriate box(es).)				DATE(S) DISCRIMINATION TOOK PLACE	
<input checked="" type="checkbox"/> RACE <input checked="" type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input checked="" type="checkbox"/> NATIONAL ORIGIN				Earliest Latest	
<input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION				02-01-2016 03-15-2018	
<input checked="" type="checkbox"/> OTHER (Specify) RSA 354-A				<input checked="" type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):					
<ol style="list-style-type: none">1. I identify as African-American. My national origin is Rwandan. I speak English with an accent.2. I was hired by B-X Concord, LLC d/b/a The Birches Concord in February 2015 as a full-time LPN.3. I performed my job adequately.4. During my time at the Birches, I was treated differently due to my race and national origin.5. I received a lower hourly rate than other white LPNs, who have similar education and experiential backgrounds.6. The person in charge of putting the schedule together is Melissa Acres. Acres told me on at least one occasion that she could not understand my language.7. Acres would limit the hours I was scheduled even when hours were available.8. I complained to my supervisor Melinda Noel about Acres' behavior toward me. Noel took no action.					
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.				NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.				I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
Date 5/28/18				SIGNATURE OF COMPLAINANT	
Charging Party Signature				SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE	
				(month, day, year)	
				March 28, 2018	
				Victoria Croto Notary Public, State of New Hampshire My Commission Expires Aug. 2020	

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

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Charge Presented To: Agency(ies) Charge No(s):

☒ FEPA

EDCRNO(R) 0158-18

☒ EEOC**16D-2018-00185****New Hampshire Commission for Human Rights**

and EEOC

State or local Agency, if any

9. I requested to be moved to per diem status in February 2016 to allow me to go back to school.
10. At some point, I decided I would not be able to go back to school. I requested to be reinstated as full-time.
11. There were full-time LPN positions available.
12. I was told I had to interview for the additional hours and to be reinstated as full-time. My white colleagues who likewise requested to be moved from per diem status to full-time status were not required to interview.
13. After the interview, I was told someone else was chosen to take the full-time hours. The person chosen was white.
14. There were other full-time LPN positions available for which I was not considered.
15. I was instructed to stay a per diem LPN.
16. Acres was charged with scheduling and limited my hours. Acres and the Birches alleged there were no per diem hours or hours in general for me. However, the Birches have LPN positions posted and other white per diem LPNs were receiving hours.
17. On March 25, 2017, I was injured at work. My injury caused a disabling condition.
18. My doctor ordered me to have a light duty job temporarily.
19. The Birches told me there were no light duty jobs; however, it accommodated other white staff needing light duty jobs.
20. Although I am still considered per diem at the Birches, I am not being scheduled.
21. I believe I was treated differently and not scheduled for hours because of my race, color and national origin.
22. My employer's failure to provide a reasonable accommodation is retaliation for my having engaged in the protected activity of requesting accommodations.
23. I have and continue to suffer damages, including but not limited to lost wages, lost earning capacity, lost employment benefits, emotional distress, humiliation, inconvenience, and loss of enjoyment of life. I seek all damages to which I am entitled.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

9/28/18

Date

Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

[Signature] Aug 20, 2020

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

[Signature]

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

March 28, 2018

Victoria Orsini
Notary Public, State of New Hampshire
My Commission Expires August 2020